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OFFICE OF PETITIONS

In re Application of
Timothy Paddock
Application No. 10/772,562
Filed: February 5, 2004
Attorney Docket No. 0978-0027

DECISION ON PETITION

This is a decision on the petition, filed April 7, 2006, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment and as a petition under 37 CFR 1.137(b) to revive the above-identified application.

The petition under 37 CFR 1.8(b) is GRANTED.

The petition under 37 CFR 1.137(b) is **DISMISSED** because (1) it was not accompanied by the fee required by 37 CFR 1.137(b)(2), and (2) the petition is unnecessary in view of the granting of the petition under 37 CFR 1.8(b) granting the petition to withdraw the holding of abandonment.

This application was held abandoned for failure to timely respond to the final Office action of February 17, 2005, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before May 17 2005. A Notice of Abandonment was mailed on February 8, 2006.

Petitioner states that a reply was submitted via facsimile transmission on four separate occasions, which consisted of "a selection of responses enabling him [the examiner] to choose the one that he felt was immediately allowable in order to progress the patent to grant." However, petitioner states that the examiner had indicated that none of these submissions were received. In support of the allegation of the submission of the four previous facsimile transmissions, petitioner has submitted a copy of an "Itemised Call Statement." While the itemized statement is barely legible, it appears that some type of communication was transmitted around April 18, 2005. Petitioner has submitted a copy of a previously mailed correspondence, which bears a certificate of mailing dated April 18, 2005, transmitting 11 pages, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, as the Examiner has indicated that the version of the previously transmitted reply submitted with the petition now places the application in condition for allowance, the holding of abandonment for failure to timely file a reply to the final Office action of February 15, 2005 is hereby withdrawn and the Notice of Abandonment mailed February 8, 2006 is vacated. This application is restored to pending status.

The copy of the reply received with the petition will be accepted in place of the previously submitted reply of April 18, 2005.

Petitioner has appointed a representative to conduct all business before the U.S. Patent and Trademark Office (Office). The Office will not engage in dual correspondence with petitioner and petitioner's representative. Accordingly, petitioner must conduct all future correspondence with this Office through the representative of record. A courtesy copy of this decision is being mailed to petitioner; however, all future communications regarding this file will be directed solely to the above-noted representative's address until otherwise instructed. *See* 37 CFR 1.33(a).

This application is being referred to Technology Center AU 3618 for appropriate action in the normal course of business on the reply received with petition.


Frances Hicks

Petitions Examiner
Office of Petitions

cc:

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